

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JUNIPER NETWORKS, INC.,
Petitioner,

v.

PARITY NETWORKS, LLC,
Patent Owner.

Case IPR2018-01643
Patent 6,831,891 B1

Before JEFFREY S. SMITH, MIRIAM L. QUINN, and
KAMRAN JIVANI, *Administrative Patent Judges*.

SMITH, *Administrative Patent Judge*.

DECISION
On Request for Rehearing
37 C.F.R. § 42.71

I. INTRODUCTION

Petitioner, Juniper Networks, Inc., filed a Request for Rehearing (Paper 9, “Req.”) of our decision denying institution of *inter partes* review (Paper 8, “Dec.”) dated April 30, 2019. Petitioner contends that the Decision improperly limited the scope of the claimed “virtual output queues” and misapprehended the disclosures of Schwartz and Petitioner’s arguments in the Petition. Req. 2–3. For the reasons set forth below, Petitioner’s Request for Rehearing is denied.

II. STANDARD OF REVIEW

Section 37 C.F.R. § 42.71(d) states the following:

A party dissatisfied with a decision may file a single request for rehearing without prior authorization from the Board. The burden of showing a decision should be modified lies with the party challenging the decision. The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply.

III. DISCUSSION

In its Request, Petitioner contends (1) that we overlooked Petitioner’s mapping of the claimed “establishing at each input port, a number of virtual output queues equal to the number of output ports” to the teachings of Schwartz, (2) that we overlooked Petitioner’s proposed claim construction of “establishing at each input port, a number of virtual output queues equal to the number of output ports,” (3) that we overlooked Petitioner’s contention that the meta-data processor of Schwartz processes, but does not store, meta-data packets, and (4) that the prior art section of Schwartz discloses the claimed “establishing at each input port, a number of virtual output queues equal to the number of output ports.” Req. 4–11.

First, Petitioner contends that we overlooked Petitioner's argument that the claimed virtual output queues are disclosed in Schwartz as the combination of input buffers and meta-data packets. Req. 5 (citing Pet. 29–30; Ex. 1004, 3:19–23). Petitioner also contends that we erred in determining that the Petition did not map the claimed virtual output queues to the meta-data processors, because the Petition did not rely on the meta-data processors to teach the claimed virtual output queues. Req. 4–6.

The Petition did not contend that the input buffers and meta-data packets of Schwartz teach the claimed virtual output queues. *See* Pet. 28–31. Rather, the Petition simply quoted passages from pages 3, 4, 12, and 15 of Schwartz without further explanation, then concluded that a person of ordinary skill in the art would have recognized that the quoted sections of Schwartz disclose “establishing at each input port, a number of virtual output queues equal to the number of output ports” as claimed. *See* Dec. 10 (citing Pet. 28–31). For example, the Petition mentioned the meta-data processor of Schwartz six times, without explaining that Petitioner allegedly was not relying on Schwartz's meta-data processor to teach the claimed virtual output queues. *See* Pet. 28–31. The Petition also did not explain that Petitioner allegedly was relying on Schwartz's input buffers and meta-data to teach this limitation. *Id.*

The Petition did not explain how the quoted sections of Schwartz teach (1) a number of virtual output queues equal to the number of output ports, nor (2) establishing the number of virtual output queues at each input port. *See* Dec. 10. We could not have overlooked the Petition's contention that the claimed “establishing at each input port, a number of virtual output queues equal to the number of output ports” is disclosed by Schwartz as the

combination of input buffers and meta-data packets, because the Petition did not state this contention.

Second, Petitioner contends that our interpretation of “establishing at each input port, a number of virtual output queues equal to the number of output ports” incorrectly overlooked the Petition’s contention that the broadest reasonable interpretation of “at each input port,” read in light of the specification of the ’891 patent, does not require all components of the virtual output queues to be physically located at each input port, but rather, encompasses establishing virtual output queues anywhere. Req. 6–8.

The Petition did not propose a construction of the claim term “at each input port.” Pet. 5. Rather, the Petition stated that “none of the terms requires formal construction by the Board.” *Id.* We could not have overlooked the Petition’s contention that the scope of “establishing at each input port, a number of virtual output queues equal to the number of output ports,” read in light of the specification of the ’891 patent, encompasses establishing virtual output queues anywhere, because the Petition did not propose this construction.

Third, Petitioner contends that the Board offered no explanation as to why the claimed “each virtual output queue . . . storing only packets destined for the associated output port” is not the same as Schwartz’s disclosure of storing data packets at an input buffer and generating meta-data for the data packets. Req. 9. Petitioner also contends that the Board did not explain why the Decision focused on Schwartz’s meta-data processor that processes, but does not store, the meta-data. *Id.*

As discussed above, the Petition did not contend that Schwartz’s disclosure of storing data packets at the input buffer and generating meta-

data for the data packets teaches the claimed “virtual output queues.” See Pet. 29–31. The Petition also did not explain that the meta-data processor processes, but does not store, the meta-data. See *id.* Rather, the Petition quoted Schwartz’s disclosures that the meta-data processor “will enqueue the meta-data packet” (Pet. 30 (citing Ex. 1004, 4:3–10)) and that the “meta-data packet queue [is] maintained therefor by the packet meta-data processor” (Pet. 30 (citing Ex. 1004, Abstract)). However, the Petition did not explain how maintaining a queue of meta-data at a meta-data processor teaches the claimed virtual output queue “storing only packets destined for the associated output port.”

We could not have overlooked Petitioner’s contention that Schwartz’s teaching of storing a packet at the input buffer and generating meta-data for the packet teaches the claimed “each virtual output queue . . . storing only packets destined for the associated output port,” because the Petition did not state this contention. We also could not have overlooked Petitioner’s contention that the meta-data processor of Schwartz enqueues meta-data packets and maintains the meta-data packet queue, but does not store meta-data packets, because the Petition did not state this contention.

Fourth, Petitioner contends we overlooked the Petition’s reliance on the background section of Schwartz to teach the claimed “establishing at each input port, a number of virtual output queues equal to the number of output ports.” Req. 10–11 (citing Pet. 18; Ex. 1004, 2:12–19).

The background section of Schwartz discloses that “each output port will effectively provide one queue for each input port, in which case the total number of queues provided by the switching node will be on the order of N^2 , where ‘N’ is the number of input ports, which, in turn, corresponds to the

number of output ports.” Ex. 1004, 2:12–17. Schwartz discloses the problem with this prior art approach is that “as ‘N,’ the number of input/output ports, increases, the number of queues maintained by the output ports increases quadratically, at a much faster rate, and so output queuing does not scale well.” Ex. 1004, 2:17–19.

The Petition did not explain how the background section of Schwartz teaches “virtual output queues” as claimed. Nor did the Petition explain how the teachings of the background section of Schwartz would have been modified to teach “establishing at each input port, a number of virtual output queues equal to the number of output ports” as claimed, especially in light of Schwartz’s discouragement of quadratically increasing the number of queues as the number of input/output ports increases. *See Para-Ordnance Mfg., Inc. v. SGS Importers Int’l, Inc.* 73 F.3d 1085, 1090 (Fed. Cir. 1995) (“A reference may be said to teach away when a person of ordinary skill, upon [examining] the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.”).

To the contrary, the Petition relied on Schwartz’s disclosure that the invention “avoid[s] the quadratic increase in packet queues, relative to increasing numbers of input/output ports” and “provides for the linear increase in packet queues, relative to increasing numbers of input/output ports.” *See* Pet. 29 (quoting Ex. 1004, 3:2–13). The Petition did not explain how providing a linear increase in packet queues relative to increasing numbers of input/output ports teaches “establishing at each input port, a number of virtual output queues equal to the number of output ports.”

We do not agree with Petitioner, that the Petition contended the background section of Schwartz discloses “establishing at each input port, a number of virtual output queues equal to the number of output ports” as claimed. We did not overlook this contention, because the Petition did not state this contention.

IV. CONCLUSION

For the foregoing reasons, Petitioner did not show that the Board misapprehended or overlooked any arguments or evidence presented by the Petition.

V. ORDER

Accordingly, it is

ORDERED that the Request for Rehearing is denied.

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